

§ 85a.3 Authority for investigations of places of employment.

(a) NIOSH authorized representatives who have been issued official NIOSH credentials are authorized by the Director, NIOSH, under sections 20 and 8 of the OSH Act, sections 501 and 103 of the FMSH Act, and this part. To enter without delay any place of employment for the purpose of conducting investigations of all pertinent processes, conditions, structures, machines, apparatus, devices, equipment, and materials within the place of employment; and to conduct medical examinations, anthropometric measurements and functional tests of employees within the place of employment as may be directly related to the specific investigation being conducted. Such investigations will be conducted in a reasonable manner, during regular working hours or at other reasonable times and within reasonable limits. In connection with any investigations, such NIOSH authorized representatives may question privately any employer, owner, operator, agent, or employee from the place of employment; and review, abstract, or duplicate employment records, medical records, records required by the Act and regulations, and other related records. In those instances where systems of records subject to review, abstraction or duplication are of a confidential nature, such as medical records, and are abstracted or duplicated, NIOSH will maintain such systems in accordance with the Privacy Act of 1974 (5 U.S.C. 552a) and the implementing regulation of the Department of Health and Human Services (45 CFR part 5b).

(b) Areas under investigation which contain information classified by any agency of the United States Government in the interest of national security will be investigated only by NIOSH authorized representatives who have obtained the appropriate security clearance and authorization.

[41 FR 45002, Oct. 14, 1976, as amended at 45 FR 2654, Jan. 14, 1980]

§ 85a.4 Procedures for initiating investigations of places of employment.

(a) Except as otherwise provided in paragraph (b) of this section, NIOSH authorized representatives will contact

an official representative of the place of employment prior to any site visits and will provide the details of why an investigation of the place of employment is being conducted. Prior to the initiation of a site visit of a place of employment, representatives of the following organizations will be advised of the site visit and the reason for its conduct:

(1) The appropriate State agency designated under section 18(b) of the OSH Act, or if no State agency has been designated under the OSH Act and in the case of the FMSH Act, the State agency which, in the judgment of NIOSH, would benefit the most from the investigation's findings;

(2) If there is a local union at the place of employment, the local president, business manager or other appropriate individual;

(3) The appropriate Assistant Regional Director, when investigations are conducted under the OSH Act;

(4) The appropriate MSHA District Office; the Director, BOM, and the Assistant Director for Mining, BOM, when investigations are conducted under the FMSH Act.

(b) Advance notice of site visits will not be given to the place of employment or local union at the place of employment when, in the judgment of the NIOSH authorized representatives, giving such notice would adversely affect the validity and effectiveness of an investigation. Those individuals and organizations specified in § 85a.4(a)(1), (a)(3) and (a)(4) will be notified prior to the initiation of such a site visit. After the site visit has been initiated, and, as soon as possible thereafter, the NIOSH authorized representatives will contact those individuals specified in § 85a.4(a)(2) concerning the nature and details of the site visit.

(c) In those instances where site visits are not necessary to the conduct of an investigation, the NIOSH authorized representatives will contact an official representative of the place of employment either verbally or through a written communication and provide the details of why an investigation of the place of employment is being conducted. If appropriate, the NIOSH authorized representatives will contact